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May 9, 2000

TO INTERESTED PARTIES:

JAMES E. SPEED
Executive Director

UPDATE OF ASSESSORS' HANDBOOK SECTION 267,
WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS

The Board has initiated an update of Assessors' Handbook Section 267 (AH 267), *Welfare, Church, and Religious Exemptions*. Enclosed are Board staff's proposed changes which reflect recent revisions to the Revenue and Taxation Code and Title 18 of the California Code of Regulations (Property Tax Rules). The revisions occur primarily in Chapter 5, *Housing*, and in the *Multispecialty Clinics* section of Chapter 3. These sections, including a new appendix referenced in Chapter 5, are attached in their entirety with revisions to the existing handbook shown in strikeout and underline format. Minor nonsubstantive changes are listed on a matrix with page references to the current handbook.

Interested parties are asked to submit any proposed revisions to the text presented in the matrix and revised chapters by **June 9, 2000**. The proposed revisions should be submitted as alternative text and should reference an item number on the enclosed matrix, or page and line numbers from the attached updates. Staff will review the suggested changes submitted and incorporate into the draft those that are deemed appropriate. A second matrix will be distributed if necessary.

The updated draft of AH 267 is scheduled for presentation to the Property Tax Committee on August 9, 2000, when any unresolved wording differences with interested parties will be presented to the Committee for resolution. It is not anticipated that an interested parties meeting will be held regarding this project.

If you have any questions regarding the enclosed matrix or the update of this handbook section, please contact Gordon Ferguson at (916) 322-3815 or gordon.ferguson@boe.ca.gov. The current handbook section is available on the Board's Web site (www.boe.ca.gov) or may be purchased from the Property Taxes Department at (916) 445-4982. Staff appreciates your continuing cooperation in the revision and updating of this Assessors' Handbook Section.

Sincerely,

/s/ Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ: gf
Enclosure

**UPDATE OF AH 267, WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS
STAFF'S PROPOSED REVISIONS**

ITEM	Page <i>October 1998</i>	Proposed Revision	Comments
1.	Page 1 Footnote 4	<i>Cedars of Lebanon v. County of Los Angeles</i> (1950 2) 35 Cal.2d 729, 746; <i>YMCA v. County of Los Angeles</i> (1950 2) 35 Cal.2d 760, 767.	Correct citation error
2.	Page 7 1 st paragraph	such clinics are considered within the scope of <u>the hospital</u> for purposes of section 214.	Grammar correction
3.	Page 8 2 nd paragraph 1 st sentence in parenthesis	(See also Chapter 2 for organizational requirements, and Chapter 3 for property use requirements, <u>and Chapter 5 for requirements for the exemption of property used for housing.</u>	Added to provide reference to more complete discussion in Ch. 5
4.	Page 11 5 th bullet	Organization's earnings must not benefit <u>any</u> private shareholder or individual;	Correct wording to make consistent with code section
5.	Page 12 End of 1 st paragraph	∴, therefore, the total income received from the lease may not exceed the ordinary and unusual expenses of maintaining and operating the leased property⁴⁴	Moved to next paragraph to correct location. See item 6
6.	Page 12 End of 2 nd paragraph	<u>The total income received from the lease may not exceed the ordinary and usual expenses of maintaining and operating the leased property.⁴⁴</u>	Moved from previous paragraph to correct location. See item 5
7.	Page 17 Add to end of last paragraph	<u>(See Appendix C: Guidelines for Dedication and Dissolution Clauses.)</u>	Moved to the beginning of the section from page 19 for clarity. See item 8
8.	Page 19 End of 2 nd paragraph	(See Appendix C, Guidelines for Dedication-Dissolution Clauses.)	Deleted here and moved to beginning of section for clarity. See item 7
9.	Page 24 2 nd paragraph	Property must be used exclusively for religious, hospital, or charitable purposes and be in such use on the January 1 lien date. The exemption would thus generally be inapplicable to an unused vacant lot, to an unused building, and to an unused portion of a building. ⁸⁸ <u>A limited exception was added by the Legislature in section 214.15, which exempts vacant land owned by qualified nonprofit organizations that build housing for sale to low income residents under specified conditions. (See discussion of requirements in Chapter 5.)</u>	Added to provide reference to more complete discussion of new law in Ch. 5

Page numbers cited in column two are to pages in current handbook.

**UPDATE OF AH 267, WELFARE, CHURCH, AND RELIGIOUS EXEMPTIONS
STAFF'S PROPOSED REVISIONS**

ITEM	Page <i>October 1998</i>	Proposed Revision	Comments
10.	Page 24 Added before the last sentence in the 4 th paragraph	<u>Section 214.2 states that as used in section 214.1 "facilities in the course of construction" includes the demolition or razing of a building with the intent to replace the building with a facility to be used exclusively for religious, hospital or charitable purposes. "Facilities in the course of construction" must have activity connected with the construction or rehabilitation of a new or existing building or improvement that results in physical changes visible to any person inspecting the site where the building or improvement is located.</u>	Moved from page 25 because it fits better in this paragraph. See item 11.
11.	Page 25 1 st paragraph	Course of Construction Defined by Statute Section 214.2 states that as used in section 214.1 "facilities in the course of construction" includes the demolition or razing of a building with the intent to replace the building with a facility to be used exclusively for religious, hospital or charitable purposes. "Facilities in the course of construction" must have activity connected with the construction or rehabilitation of a new or existing building or improvement that results in physical changes visible to any person inspecting the site where the building or improvement is located.	Text relocated to previous page for better flow. See item 10.
12.	Page 33 Added at end of paragraph at top of page	Consistent with judicial precedent, educational activities which primarily benefit an organization's shareholders are not exempt. <u>(See discussion on this topic in Chapter 1).</u>	Added to provide reference to additional discussion on this topic in Ch. 1
13.	Page 36 Bullet at end of page	The property must be owned by an organization meeting the requirements of article XIII, section 4 <u>(b)</u> of the California Constitution and section 214(a)(1) to (7), inclusive.	Corrected section reference.

Page numbers cited in column two are to pages in current handbook.

1 *reasonably necessary* to a complete modern hospital.¹¹² Additionally, the property for which
 2 exemption is claimed must be used for the actual operation of the exempt activity.¹¹³ In the
 3 *Cedars of Lebanon Hospital* case, the Supreme Court denied the exemption to the portion of the
 4 hospital premises which was devoted to a thrift shop, on the basis that it was being used for a
 5 commercial fund raising activity rather than a charitable or hospital activity, even though the
 6 proceeds were used to accomplish an exempt purpose. Thus, eligibility for exemption is
 7 determined on the basis of the use of the property rather than on the use of income from
 8 property.

9 MULTISPECIALTY CLINICS

10 Section 214.9 expands the hospital purposes aspect of the exemption to include outpatient clinics
 11 of two types; a clinic that provides psychiatric services for emotionally disturbed children, and a
 12 *nonprofit multispecialty clinic*. Thus, property of a nonprofit multispecialty clinic and property
 13 of a clinic that provides psychiatric services for emotionally disturbed children that meet the
 14 requirements of section 214, is eligible under the hospital purposes aspect of the exemption.
 15 Section 214.9 does not provide a definition of nonprofit multispecialty clinic, but it specifies that
 16 it be such a clinic of the type described in section 1206(l) of the Health and Safety Code:

- 17 1. A clinic operated by a nonprofit corporation exempt from federal income taxation under
 18 paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as
 19 amended, or a statutory successor thereof,
- 20 2. Which conducts medical research and health education and provides health care to its
 21 patients,
- 22 3. Through a group of 40 or more physicians and surgeons,
- 23 4. Who are independent contractors,
- 24 5. Representing not less than 10 board-certified specialties, and
- 25 6. Not less than two-thirds of whom practice on a full-time basis at the clinic.

26 The multispecialty clinic is also subject to the requirement in section 214.9 that it must not
 27 reduce the level of charitable or subsidized activities it provides as a proportion of its total
 28 activities.

29 Finally, section 214.9 does not include those portions of an outpatient clinic which may be leased
 30 or rented to a physician for the general practice of medicine. Thus, a nonprofit multispecialty
 31 clinic is eligible for exemption under the hospital purposes aspect of the exemption only if the
 32 clinic meets all the requirements in section 214 and section 214.9, which includes section 1206(l)
 33 of the Health and Safety Code.

¹¹² *Cedars, supra* at page 745.

¹¹³ Section 214(a)(3).

~~Multiple clinic sites operated as a unified integrated clinic may be treated as a single clinic for purposes of section 214.9 based on a recent Board decision.¹¹⁴~~ In 1997, the Board of Equalization considered whether each clinic site must meet all the requirements for exemption per the definition of a multispecialty clinic in section 1206(l) of the Health and Safety Code, or whether these requirements could be met by all of the claimant's clinic sites as a group.¹¹⁵

The claimant provided evidence that its clinics operated as a single integrated clinic: all sites operated by a single board of directors and common management and share assets, personnel, patients, support functions; ~~are all sites~~ subject to the same operational procedures, patient charge rates and personnel policies; and, each site ~~is~~ dependent on the support and assistance rendered to it by professional personnel at the other sites in order to operate as a health facility.

Pursuant to the Board's authority under section 254.5, and the specific wording of section 214.9, the Board found that the Health and Safety Code section 1206(l) requirements for purposes of section 214.9 applied to all of ~~thea~~ claimant's clinic sites which are operated as a *unified single integrated clinic in the aggregate*.

~~Accordingly, the requirement that a clinic maintain a group of 40 or more physicians representing not less than 10 specialties and not less than two thirds of whom practice on a full-time basis, may be met by aggregating the group of physicians at all of a claimant's clinic sites. The nonprofit organization should provide information addressing the above requirements when filing its exemption claim for multispecialty clinics.~~

A clinic which does not provide psychiatric services for emotionally disturbed children and which is not a nonprofit multispecialty clinic of the type described in section 1206(l) would not be included in the definition of a hospital and would not qualify under the hospital purposes aspect of the exemption per section 214.9. However, it may qualify under the charitable purposes aspect of the exemption.

CHARITABLE HEALTH CARE ORGANIZATION

If a nonprofit health care facility does not qualify for exemption as property used for hospital purposes under section 214 et seq., it must satisfy the charitable purposes and activities requirements of section 214 for its property to qualify for the welfare exemption. If it is claimed that a nonprofit health care organization satisfies the charitable purposes and activities requirements for exemption, details regarding the charitable aspects must be provided by the claimant. The claimant's claim, financial statements, and/or other statements should indicate donations/grants received and services or programs provided to the public on a sliding fee schedule or at no charge. Health education provided to the public is within the charitable purposes and activities requirement of section 214. Thus, information should be included

¹¹⁴ ~~Board of Equalization Decision in the Matter of St. Jude Hospital Yorba Linda, dba St. Jude Heritage Health Foundation. (1997)~~

¹¹⁵ Board of Equalization Decision in the Matter of St. Jude Hospital Yorba Linda, dba St. Jude Heritage Health Foundation. (1997)

CHAPTER 5: HOUSING

INTRODUCTION

The welfare exemption is available for property used for various housing purposes: (1) housing property used exclusively for exempt purposes,¹⁸³ (2) housing for employees of qualified organizations,¹⁸⁴ (3) housing for lower-income households,¹⁸⁵ (4) housing for low and moderate income elderly and/or handicapped families,¹⁸⁶ (5) emergency or temporary shelter and related facilities for homeless persons and families.¹⁸⁷ This chapter discusses the requirements for qualifying for exemption for each kind of housing program.

HOUSING PROPERTY USED EXCLUSIVELY FOR AN EXEMPT PURPOSE

The question of whether the welfare exemption extends to property used for housing and related facilities¹⁸⁸ provided by religious, hospital, scientific, and charitable organizations has presented property tax administrators and the California Courts with some difficult decisions over the years. Property tax administrators have historically taken a narrow view of the exemption, and have viewed much housing to be non-exempt on the grounds that the property is being used primarily for private residential purposes rather than exempt purposes, and is not being used exclusively for exempt purposes as required by section 214.

The courts, however, have taken a broader view, consistent with the Supreme Court's directive that statutory and constitutional provisions granting exemption are to be construed strictly, but reasonably. The Court stated that "...[t]he rule of strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption, for a fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptance of the language employed and the object sought to be accomplished thereby."¹⁸⁹ The Court recognized that too narrow an interpretation (1) would be inconsistent with the ordinary language of the provisions; and (2) would frustrate the underlying purpose of the constitutional and statutory provisions, to provide a property tax exemption to the properties of qualifying nonprofit organizations. Thus, —In a number of cases, the courts, in a number of cases, have applied the principle that the term "exclusively used" is not to be applied literally so as to mean only, solely and purely for the stated exempt purposes to the total exclusion of any other use. Rather, the courts have said that the term not only applies to the primary use or purpose, but also to uses that

¹⁸³ Section 214(a).

¹⁸⁴ Section 214(i).

¹⁸⁵ Section 214(g).

¹⁸⁶ Section 214(f).

¹⁸⁷ Section 214(h).

¹⁸⁸ Related facilities have not been defined, but it is reasonable to assume that what is intended to be included are facilities such as dining rooms, kitchens, showers and toilets, and common rooms such as lounges, living rooms, recreation rooms and laundry facilities. When used in this discussion, the term *housing* includes *related facilities*.

¹⁸⁹ Cedars, supra at page 735.

are incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization. ~~Applying this test~~ Thus, the courts have exempted properties used for a wide range of housing as property used exclusively for exempt [religious, charitable or hospital] purposes within the meaning of section 214(a).

JUDICIAL AND ADMINISTRATIVE STANDARDS

Decisions of Courts

As the following cases illustrate, the courts have applied two similar, but slightly divergent statements of the standard for exemption; that the housing must be *incidental to and reasonably necessary for the accomplishment of the exempt purpose* of the nonprofit organization or that housing be *institutionally necessary* in accomplishing the organization's exempt purpose in order to qualify for exemption as property used exclusively for [exempt] purposes within the meaning of section 214(a). The California Supreme Court used these terms interchangeably and/or simultaneously in which the court applied the exemption to property used for housing in four decisions issued on the same day, and as such, the terms should be construed as having the same meaning, and constituting a single, uniform standard for exemption purposes.

- The California Supreme Court first considered the application of the welfare exemption to housing in the landmark case *Cedars of Lebanon Hospital v. County of Los Angeles*,¹⁹⁰ which determined how the welfare exemption applied to hospitals and hospital facilities. The court, ~~held,~~ under the rule of strict but reasonable construction, interpreted the exclusive use requirement of section 214(a), that property used exclusively for hospital purposes to -includes any facility which is *incidental to and reasonably necessary for the accomplishment of hospital purposes*; in other words, any facility which is reasonably necessary for the fulfillment of a generally recognized function of a complete modern hospital. Applying this test, the court exempted housing for interns, resident doctors, student nurses, and certain other hospital employees deemed essential to the operation of a complete modern hospital on a 24-hour basis.
- On the same day in 1950, the court issued an opinion in the case of *Serra Retreat v. County of Los Angeles*¹⁹¹ holding that the exemption applied to living quarters for four priests and six lay-brothers who attended to the needs of laymen who attended religious retreats. The court held that the provision of housing for essential retreat personnel is an *institutional necessity* and constitutes *property used exclusively for religious purposes*. The free retreats lasted 50 hours - typically on weekends - and were directed toward laymen for the purpose of a silent religious meditation and reflection. The priests provided sermons, meditations and religious services. The lay-brothers did cooking, housekeeping, laundry, gardening and maintenance work, and generally provided for the "temporal needs" of the retreatants.

¹⁹⁰ *Cedars, supra* at page 759.

¹⁹¹ (1950) 35 Cal.2d 755. *Serra Retreat, supra* at page 759.

- 1 • In a third case on that day in 1950 concerning the applicability of the exemption to
 2 property used for residential purposes, the California Supreme Court applied the Cedars
 3 test that property used exclusively for [exempt] purposes includes facilities incidental to
 4 and reasonably necessary for the accomplishment of the [exempt] purpose to exempt
 5 YMCA dormitory rooms rented to young men at minimum cost.¹⁹² The court observed
 6 that the dormitory facilities were designed to provide young men with a place of study,
 7 recreation and residence; thus, the dormitories were reasonably necessary for the
 8 accomplishment of the YMCA's religious and charitable purposes of promoting good
 9 citizenship and Christian ideals and character. The court stated that the fact that plaintiff
 10 dormitories, as a secondary consideration, also serve the residential purposes of the
 11 occupants, does not destroy the effect of their dominant purpose as property used
 12 exclusively for religious ... or charitable purposes within the contemplation of the welfare
 13 tax exemption law. The Supreme Court also exempted property used for housing in a
 14 fourth case decided on that day, *Fredericka Home for the Aged v. County of San Diego*.¹⁹³
 15 In addition to finding that the exemption applied to the main facility providing a home for
 16 elderly people, the court upheld the exemption for that portion of the property used as
 17 living quarters for personnel needed to care for the elderly on a 24-hour basis. Such
 18 personnel, the court said, lived on the premises as a matter of *institutional necessity*.
- 19 • Thus, under the principles set forth in these leading cases, the welfare exemption has been
 20 found to apply to a broad range of property used for housing, as further illustrated by the
 21 following cases: Temporary low-cost housing for missionaries, clergymen, other religious
 22 workers and their families while in the United States was held exempt as property used
 23 exclusively for the church's religious and charitable purposes.¹⁹⁴ The court held that the
 24 property maintained to provide temporary housing for workers on furlough status was an
 25 integral part of the church's religious and charitable operations. Further, the court
 26 observed that the housing facility furthered the church's foreign mission program of
 27 spreading Christianity throughout the world.
- 28 • A private school's property used for student board and lodging was exempted as a use of
 29 property within the school's educational purpose.¹⁹⁵ Although most of the school's
 30 students were day students, some students relied upon the school for board and lodging.
 31 The court stated that board and lodging is a one of the services provided by the school and
 32 is reasonably related to the exempt school activity.
- 33 • Dormitories and related facilities for persons assembled for religious instruction held
 34 exempt as within the organization's religious purpose, while housing for caretakers and
 35 maintenance workers at a religious conclave site were exempted as institutionally
 36 necessary.¹⁹⁶

¹⁹² *YMCA*, *supra* at pages 769-770.

¹⁹³ (1950) 35 Cal.2d 789.

¹⁹⁴ *House of Rest of the Presbyterian Church in the USA v. County of Los Angeles* (1957) 151 Cal. App. 2d 523, 536.

¹⁹⁵ *Sarah Dix Hamlin School*, *supra* at page 342.

¹⁹⁶ *St. Germain Foundation*, *supra* at page 918.

Decisions by The State Board of Equalization

~~The Board has also recognized that the welfare exemption applies to certain living quarters. In a Letter to Assessors in 1967, the Board applied the welfare exemption to convents located at parochial schools operated by a non-profit religious and charitable organization and used in connection with the schools. Nuns who lived by a vow of poverty taught at the schools and were required by the rules of their religious order to live together at the convents. The nuns received minimal remuneration, so their services could not be obtained unless living quarters were furnished rent free. The use of properties as residences was necessitated by the needs of the schools, and they were used in furtherance of the administration and operation of the schools. The residential facilities were regarded as incidental to and reasonably necessary for the accomplishment of the charitable purposes of the organization.~~

Opinions of California Attorney General

The California Attorney General has concluded that the residence of a full time resident manager of the conference grounds owned by the California-Nevada Conference of the Methodist Church qualified for the welfare exemption. The manager's duties included complete responsibility for the maintenance and condition of all the property at the conference grounds. He saw that the facilities were in readiness for groups arriving and that supplies such as communion cups, hymnals, chairs and beds were available and ready. He was responsible for protection of the property from fire and snow damage in season. In essence, he was the representative of the management of the property and the administrative officer present. He was considered by the Methodist Conference to be necessary for the effective operation of the property.¹⁹⁷

Housing For Employees: The Statutory Standard For Exemption

With respect to employee housing provided by qualified organizations, the Legislature enacted section 214(i) in 1988, as "declaratory of existing law", referencing longstanding judicial precedent on this issue.¹⁹⁸ Section 214(i) which states in relevant part that:

Property used exclusively for housing and related facilities for employees ... shall be deemed to be within the exemption ... to the extent the residential use of the property is institutionally necessary for the operation of the organization.

Thus, the statute provides that property used for employee housing will be exempt if it is *institutionally necessary* for the operation of the organization.

~~The Terms "Incidental To and Reasonably Necessary For" and "Institutionally Necessary" Are Identical and Interchangeable~~

Property Tax Rule 137, Application Of The Welfare Exemption To Property Used For Housing

In 1999 the Board of Equalization adopted Property Tax Rule 137, Application of the Welfare Exemption to Property Used For Housing, effective December 31, 1999.¹⁹⁹ The purpose of Rule

¹⁹⁷ 959 34 Ops. Cal.Att.Gen. 175.

¹⁹⁸ Section 2, Stats. 1988, Ch. 1591.

1 137 is to clarify that the welfare exemption from property taxation applies to housing and related
2 facilities owned and operated by qualified nonprofit organizations and to establish a single
3 uniform statewide standard for determining qualification for exemption of such properties.

4 The provisions of Rule 137 are consistent with judicial decisions on housing and related facilities
5 rendered by the California courts which, as previously discussed, have exempted housing of
6 qualified nonprofit organizations, applying two similar statements of the standard for exemption,
7 "incidental to and reasonably necessary for" and "institutionally necessary."²⁰⁰

8 Rule 137 provides the following guidance for applying the welfare exemption to housing:

9 (a) Housing and related facilities owned and used by community chests, funds,
10 foundations or corporations organized and operated for religious, hospital,
11 scientific or charitable purposes is eligible for the welfare exemption from
12 property taxation as provided in Revenue and Taxation Code section 214. A
13 single uniform statewide standard shall be used to determine whether the welfare
14 exemption applies to housing and related facilities owned and used by qualified
15 organizations. The standard is whether the use of the property by the organization
16 for housing and related facilities is a use that is incidental to and reasonably
17 necessary for the accomplishment of the exempt purposes of the organization.
18 For purposes of applying the uniform statewide standard, the phrase "Use of
19 property that is incidental to and reasonably necessary for the accomplishment of
20 the exempt purposes of the organization" includes the use of property that is
21 institutionally necessary for the operation of the organization as provided in
22 subdivision (i) of section 214 of the Revenue and Taxation Code.

23 (b) For purposes of determining whether property used for housing and related
24 facilities is eligible for the welfare exemption, the terms "incidental to and
25 reasonably necessary for" and "institutionally necessary" are identical and
26 interchangeable; the term "institutionally necessary" means and includes
27 "incidental to and reasonably necessary for" and vice versa. No distinctions in
28 application of the welfare exemption to housing and related facilities shall be
29 based on any difference or divergence between the terms.

30 (c) For purposes of determining eligibility for the welfare exemption, it is the use
31 of the housing and related facilities by the organization owning the property that
32 is to be considered, not the use by the occupants. If the organization's use of the
33 property is incidental to and reasonably necessary for the accomplishment of the
34 organization's exempt purposes, the property is eligible for exemption. The
35 occupant's use for personal or residential purposes is secondary to the

¹⁹⁹ Rule 137 interprets sections 4(b) and 5 of Article XIII of the California Constitution and sections 214, 214.01,
214.1, 214.2, 254, 254.5, and 255 of the Revenue and Taxation Code.

²⁰⁰ Serra Retreat, supra at page 759.

organization's primary exempt purpose and shall not disqualify the property from exemption either in whole or in part.

(d) The location of the property in relation to other property owned and used by the exempt organization is irrelevant to the application of the exemption. It is the use of the property by the organization which is the determining factor. The fact that the housing is located on property in a remote area may be considered in determining whether the housing is incidental to and reasonably necessary for the operation of the organization.

(e) EXAMPLES: The following examples illustrate the application of the welfare exemption to housing and related facilities

Example No. 1

The two-story building with seven completely-furnished apartments is used exclusively to provide temporary low-cost housing to missionaries, clergy, other religious workers and their families on furlough status while in the United States. The articles of incorporation of the nonprofit religious corporation which owns and operates the property provide that its purpose is to provide housing for missionaries, clergymen, other religious workers and their families who work in establishing and furthering its religious purposes throughout the world. This housing is exempt as a facility incidental to and reasonably necessary for the accomplishment of the church's religious and charitable purposes.

Example No. 2

The property of a private school is used to provide board and housing to students. Although most of the school's students were day students, some students relied upon the school for board and lodging. These services provided by the school are reasonably related to the exempt educational activity, and are an exempt use of the property within the school's educational purpose.

Example No. 3

Property owned by a nonprofit corporation is used for housing and related facilities for persons who assemble two weeks each year for purposes of religious instruction and worship. The residential facilities are exempt as within the organization's religious purpose. Housing for caretakers or maintenance workers required to reside at the religious conclave facility is exempt as institutionally necessary.

Example No. 4

A nonprofit religious organization owns housing which it provides to its ministers and their families. Organizational documents require the church to provide

housing as part of a system that allows the organization flexibility in assigning the clergy, aids in recruiting and keeping the clergy and provides the clergy with privacy and respite. The property also is used regularly for church functions such as youth meetings and organizational committee meetings. The church's use of its property to provide housing for its clergy is exempt as reasonably necessary for the furtherance of its religious purpose.

Example No. 5

The primary missionary activity of a nonprofit religious organization is to publish and disseminate its religious literature to the general public. The organization owns a complex consisting of a temple and six apartment buildings that provide work areas for about 250 devotees, about one-half of whom are involved in the publishing and distribution of the organization's religious books and magazines. The work areas are frequently used at night as sleeping areas since most of the devotees live in the rooms in which they work. The devotees follow a seven-hour daily regimen of communal and individual daily prayers, meditations, chanting, and attendance at temple services and observe a strict diet which necessitates living in the temple complex. Property used for housing the devotees in the temple complex is exempt as reasonably necessary for the fulfillment of the organization's religious objectives.

The five examples in Rule 137 are factually based on judicial decisions exempting housing properties. The examples are merely illustrative, and are not intended to establish exclusive standards or guidelines. Thus, the absence of one or more factors present in the examples should not be construed to disqualify property from exemption. The five examples are based on the following court cases:

Example 1: *House of Rest of the Presbyterian Church in the USA v. County of Los Angeles* (1957) 151 Cal.App.2d 523.

Example 2: *Sarah Dix Hamlin School v. City & County of San Francisco* (1963) 221 Cal.App.2d 336.

Example 3: *Saint Germain Foundation v. County of Siskiyou* (1963) 212 Cal.App.2d 911.

Example 4: *First United Methodist Church of Santa Monica, Calif. v. County of Los Angeles* (1984)

Example 5: *International Society for Krishna Consciousness, Inc. v. County of Los Angeles* (1980)

The first three examples are derived from factual situations in precedential appellate court decisions, while examples 4 and 5 are taken from appellate court decisions that were depublished. The holdings and rationale of the two depublished cases are consistent with the precedential court decisions interpreting the applicability of the welfare exemption to housing

owned by religious organizations in examples 1 and 3. As such, it is useful to include in Rule 137 the factual scenarios of the depublished cases to illustrate that the courts have exempted housing properties in a broad range of circumstances as properties used exclusively for religious purposes within the meaning of section 214(a).

~~Prior to the enactment of section 214(i), the Courts applied two similar but slightly divergent statements of the standard for exemption. The first is that the housing must be *incidental to and reasonably necessary* for the accomplishment of the exempt purposes of the organization. The second, sometimes applied by itself and sometimes in conjunction with the first standard, is the housing be *institutionally necessary* to the accomplishment of the organization's exempt purposes. In codifying the test for employee housing, the Legislature specified that the residential use be *institutionally necessary* for the operation of the organization. This divergence in terms has caused confusion and disputes. The Board has resolved this confusion by determining that the terms *incidental to and reasonably necessary for* and *institutionally necessary* are identical and interchangeable, and no distinctions in application of the welfare exemption should be based on any difference or divergence between the terms. For purposes of the welfare exemption, the term *institutionally necessary* means and includes *incidental to and reasonable necessary for* and vice versa.~~

~~There has been a further concern expressed by some in applying certain other exemptions, in particular the college exemption, the standard of exclusive use has not been consistently applied. As a result, some believe, property used for housing for university presidents has been held to be completely exempt, though housing used by the leaders of other exempt organizations, including churches, has been apportioned between exempt and non-exempt, even though the college property and the section 214 property have been used in a virtually identical manner. The college president uses the property for receptions and other official functions as well as private residential purposes, and clergy, for example, use church-owned property in the same way. The Board believes that the exemptions, and the exclusive use test, should be applied uniformly whether it is the college exemption or the welfare exemption that is being sought. Use of a uniform statewide standard is appropriate.~~

A Single Statewide Standard Applies To All Property Used for Residential Purposes

~~In summary, there is a single uniform statewide standard to be used in determining whether the welfare exemption applies to property owned and used by qualified organizations for housing and related facilities. This single standard is to be utilized whether the housing provided by the organization constitutes property used exclusively as a facility *incidental to and reasonably necessary for* the accomplishment of the exempt purposes of the organization pursuant to section 214(a), or as housing for employees which is *institutionally necessary* for the operation of the organization pursuant to section 214(i).~~

More than Mere Ownership and Occupancy is Required

~~If residential property is *institutionally necessary* or is *incidental to and reasonably necessary for* the exempt purpose of the nonprofit organization, the housing is exempt from taxation, even~~

though to the casual observer the housing is used only for the residential purposes of the occupants. This position is consistent with the judiciary's application of the welfare exemption to housing property, which was articulated in the *YMCA* case:

The fact that the [property] as a secondary consideration, also serves the residential purposes of the occupants, this does not destroy the effect of their primary purpose as property used exclusively for [exempt] purposes....²⁰¹

However, to qualify housing for exemption, something more is required than mere ownership and occupancy. The issue must be decided on a case by case basis, taking into account all the facts of the situation, since what is *institutionally necessary and incidental to and reasonably necessary for* is subject to interpretation and will vary from organization to organization.

If a residential property is owned by an organization and provided to an employee or other person who is expected or required to occupy the property because that furthers the exempt purposes of the organization, this property is to be viewed from the perspective of the claimant organization's use of its property, and not the occupant's use.

Factors to be Considered in a Case by Case Determination of Eligibility

In making case by case determinations there are a number of factors, derived largely from court decisions, which can be helpful in determining whether the housing in question is used for and serves important organizational or operational purposes. These factors include, but are not limited to the following:

1. Is the housing the primary residence of the employee or other occupant? *If not, the implication is that property is not eligible to claim exemption.*
2. Is the housing provided to an on-site resident employee, volunteer, or other person, whose presence is required for maintenance, management or security of the property, or to provide care or supervision on a 24 hour basis? *If so, the housing is institutionally necessary for the operation of the organization.*
3. Is the housing, in addition to providing living quarters for the employee or other person, used regularly for activities in furtherance of the exempt purposes of the organization, such as meetings of members and committees, social and business functions related to the exempt purpose, counseling of members, study and training in the purposes, philosophies, etc. of the organization or contemplation and prayer? *If so, the housing is institutionally necessary for the operation of the organization.*
4. Is the housing used only for private residential purposes, and not otherwise used by the organization to pursue its exempt purposes? *If so, the implication is that the property is not institutionally necessary.*

²⁰¹ *YMCA*, *supra* at pages 769-770.

~~5. Is the housing provided, on the site or adjacent to where the primary exempt activity takes place, to employees or others who provide one of the services which are necessary for the operation of a complete camp or retreat setting, such as food service? If so, this is an indication that the housing is institutionally necessary for the operation of the organization.~~

~~6. Do the organizational documents of the organization require that housing be provided for the employee or other person? If so, this is evidence that the organization considers the housing to be institutionally necessary for the operation of the organization, and the interpretation by the organization supports exemption.~~

~~7. Is the employee or other person expected to be available to members²⁰² at the housing either a portion or all of the time outside of normal working hours? If so, this is an indication that the housing is institutionally necessary to the operation of the organization.~~

~~8. Is the employee or other person required to live in the housing provided by the organization? If so, this is an indication that the organization considers the housing to be institutionally necessary to the organization's operation.~~

~~9. Where is the housing in relation to the property where the exempt activity takes place? If the housing is not adjacent or near the property, its location should be well known and reasonably accessible to the members or doubt is cast on the institutional necessity of the housing.~~

~~10. If the exempt activity is the operation of a summer camp or conference grounds, is the site in a remote location where other housing options are not available? If so, this can be considered in determining if the housing should be exempt as institutionally necessary.~~

~~11. In the case of a religious or spiritual organization, is providing a residence for the spiritual leader a well established practice and policy of the organization and has the organization set forth in writing that the provision of housing is an institutional necessity? If so, the fact that this is important to the organization is a factor in support of exemption.~~

How Many Factors Must be Present to be Eligible for Exemption

~~It is generally not possible to say that any single factor or any particular combination of factors will lead to granting or denying an exemption for housing. There simply are too many combinations of factors. The decision must be on a case by case basis, looking at all the facts of the situation. It is extremely important, however, to keep in mind what patterns of factors have been accepted by the courts in granting the exemption. The granting or denial of exemptions should be consistent with those decisions.~~

Examples

²⁰² The term *members* is intended to include all those persons who belong to or are served by the organization, and is synonymous with such terms as adherents, congregants, and retreatants. As used herein, the term is intended to be inclusive and not exclusive and should be applied in that manner.

The following examples are provided to illustrate how the factors may be applied in determining eligibility.

Example No. 1 Exempt

The housing is provided to the local lead employee and the housing is owned by an organization which has similar facilities in more than one city and state. Organizational documents require that housing be provided for their local lead employee as part of a system which allows the organization flexibility in assigning lead employees, aids in recruiting and keeping lead employees, and has as one of its purposes the providing of privacy and respite for the lead employee, consistent with the employee's pledge to devote himself/ herself entirely to his/her employment in fulfilling the purposes of organization. The property is used regularly, and not only occasionally, for training sessions for members, organizational committee meetings and youth meetings. (Section 214(i).)

The housing is exempt in its entirety.

Example No. 2 Exempt

Housing is owned by the organization and is on the organization's grounds. It is occupied by an employee, who is the chief executive officer of the organization, and his/her family. Organizational documents do not require that housing be provided, but the directors of the organization do so in the interests of having a complete organizational campus. The executive can be contacted there by members only during specified hours, and those counseling sessions take place in the living room. At other times, the living room is used for private residential purposes. The house also has a study/office which is used by the executive exclusively for business related to the organization. At other times, the housing permits the executive to have respite from his duties. (Section 214(i).)

The housing is exempt in its entirety.

Example No. 3 Exempt

The organization provides housing and working spaces for a large contingent of members who are also employees of the organization. Only member employees reside in the housing, and they have taken vows to follow a religious regimen, which requires communal and individual praying, meditation, chanting and attendance at temple services. They are required to devote their lives to a supreme being during any time they are in the housing. The religious regimen is in addition to the hours they work in a commercial enterprise for the organization. (Section 214(i).)

The housing is exempt.

Example No. 4 Not Exempt

An organization provides housing to an employee or other person as a form of compensation, in a residence donated to the organization by one its members. The organizational documents do not require that housing be provided, nor is anyone required to live there. No meetings,

~~counseling or other activities related to the exempt purposes of the organization take place there. The resident is not expected to receive members at the home. (Section 214(a) and (i).)~~

~~*This residence is deemed to be used purely for private residential purposes and is not exempt.*~~

~~Example No. 5 Exempt~~

~~An organization operates a summer camp for boys and girls, which provides opportunities for inner city youth to learn about nature and the wilderness. The organization is a qualified charitable organization. The camp is in a remote area where there are no alternative housing opportunities for the staff. The staff includes teachers, counselors, the camp manager, cooks and kitchen staff. (Section 214(a) and (i).)~~

~~*All the housing is exempt.*~~

~~Example No. 6 Exempt~~

~~A qualified organization owns and maintains a residence in an area of the city in which the organization conducts its exempt activities. Several persons carrying out the exempt purpose and activities of the organization reside at the property. They are required to live at the residence because the organization considers it important that they live in the community in which they serve, and they are to be available on a 24 hour basis. They receive a small living stipend and free room and board in lieu of a salary. (Section 214(i).)~~

~~*All the housing is exempt.*~~

~~Example No. 7 Partially Exempt~~

~~A qualified charitable organization operates a residential school where students live on campus. The students' housing is exempt and the following staff housing is exempt:~~

~~1. The person responsible for the well being of the students (headmaster/dean).~~

~~2. A caretaker/maintenance person who can operate/shut down equipment/utilities in an emergency.~~

~~3. Dormitory supervisor(s) to maintain order at night, living with or in close proximity to the students (may serve in another capacity during the day).~~

~~4. Housing for cooks, groundskeepers, janitors, faculty or their staff generally is not exempt, with the exception of a situation where the school is located in a remote area without residential property within a reasonable commuting distance.~~

~~*Student housing is exempt per section 214(a); employee housing exempt per section 214(i).*~~

~~Example No. 8 Partially Exempt~~

~~A qualified organization has a 10-acre rural property with several buildings, two of which are multi-unit facilities that are used for housing 20 persons.~~

~~1.Ten persons work for an organization which provides in residence instructional seminars, receive a modest salary that would not cover the cost of living elsewhere, and the housing is provided in lieu of compensation. These persons all live in building A, each person occupying a separate dwelling unit. (Section 214(i).)~~

~~—Building A is exempt, along with land incidental to the building.~~

~~2.Ten other persons, who work at various paid jobs in a nearby city, reside in separate dwelling units in building B on the property and pay rent. Building B and land incidental to the building is not exempt.~~

Example No. 9 Exempt

~~1.Minister "A" is considered a self-employed business person. His/her compensation consists of contributions from church members and a residence provided by the church. The church organization's bylaws require that a residence be provided for the minister and his/her family which the organization views as necessary for the purpose of recruiting a minister to serve the church. The residence, which is a few blocks away is used a few times a month for church related activities such as dinners with church members and prayer meetings. (Section 214(i).)~~

~~2.The housing is exempt.~~

~~2.Clergy "B" is a student volunteer who dedicates his/her time to studying for the ministry and serving the spiritual needs of infirm persons who are hospitalized. He/she receives a small stipend and is provided a room in a residence owned by the church. Two other clergy who are employees of the church organization, also reside at this residence and provide the religious services at the church. (Section 214 (i).)~~

~~2.The entire residence is exempt.~~

Example No. 10 Exempt

~~A qualified charitable/religious organization operates a drug rehabilitation program for young adults. Program fees are on a sliding scale, based on the income of the individual or his or her family. Government grants and charitable donations subsidize the cost of the program. The organization owns a large facility for this purpose and persons participating in the program, as well as certain staff, are required to live at the residence. The in-residence staff must be available on a 24-hour basis to supervise and provide for the needs of the persons receiving treatment. (Facility and housing for persons undergoing treatment, section 214(a); employee housing, section 214(i).)~~

~~All the facility is exempt, including the residential area.~~

HOUSING FOR LOWER-INCOME HOUSEHOLDS

Subdivision (g) of section 214 extends the welfare exemption to property owned and operated by qualifying organizations and used exclusively for rental housing which is occupied by lower-income households.²⁰³ Qualifying organizations include limited partnerships in which the managing general partner is a qualified nonprofit corporation meeting the requirements of section 214, as well as religious, hospital, scientific, or charitable funds, foundations or corporations. Section 214(g) provides a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property.

~~A partial exemption, equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property, is also available.~~

CRITERIA FOR THE PROPERTY TO QUALIFY FOR EXEMPTION

The 1999 amendments to section 214, subdivisions (g)(1) and (g)(2), revised the requirements for low income housing properties and apply to all projects for which exemption is claimed for the year 2000.

The amendment to section 214(g)(1)(A) deletes the language allowing qualified organizations to qualify their low income housing projects for exemption if twenty percent or more of the occupants are lower income households and the rents do not exceed those prescribed by section 50053 of the Health and Safety Code. Thus, ~~For~~ a low income housing project can qualify for exemption under this criteria only for 1999 and years prior. ~~owned and operated by a qualifying organization to be eligible for the exemption, the project~~ Starting with the year 2000, low income housing properties must meet one of the following criteria to be eligible for exemption:²⁰⁴

~~1. Twenty percent or more of the occupants of the property are lower income households whose rent does not exceed that prescribed by section 50053 of the Health and Safety Code; or~~

2.1. The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower-income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance;²⁰⁵ or

²⁰³ Section 237, effective January 1, 2000, provides exemption for certain low-income housing properties of federally recognized Indian tribes. This section is not within the welfare exemption, thus, it is administered solely by the county assessor.

²⁰⁴ Section 1, Stats. 1999, Ch. 927, effective October 10, 1999.

²⁰⁵ Section 214(g)(1)(A).

~~3.2.~~ The owner of the property is eligible for and receives low-income housing tax credits pursuant to section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.²⁰⁶

Thus, properties that previously qualified on the basis that twenty percent or more of the occupants are lower income households at the prescribed rent levels, will not be eligible for exemption as of January 1, 2000, if they cannot meet one of the two remaining criteria indicated above.

Requirements for Owner of Property

~~In order to be eligible for the exemption provided by subdivision (g) of section 214, the owner of the property must do both of the following:~~

~~1. Certify and ensure that there is a deed restriction, agreement, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.~~

~~2. Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.~~

The amendments to section 214(g)(2) also deleted former statutory language requiring an owner to certify and ensure "a deed restriction, agreement or other legal document" that restricts the project's' usage and substituted the requirement that an owner must certify and ensure that there is either (1) "an enforceable and verifiable agreement with a public agency;" or, (2) a recorded deed restriction that restricts the project's usage, as described.

The term "agreement" references a regulatory agreement with a government agency that has financed the purchase and/or rehabilitation of low income housing project. Such agreements generally contain the restriction that the property must be used for qualified low-income tenants for an extended period of time and are recorded with the county recorder in which the property is located.

Recorded Deed Restriction Requirement

A recorded deed restriction meeting the requirements of section 214(g)(2)(A), must state that the property's usage is restricted to lower income housing; and, that the units designated for use by lower income households are continuously available to or occupied by such households at rents within the prescribed limits. The deed restriction must indicate that the rents shall not exceed those prescribed by Health and Safety Code section 50053, or in the case of a conflict between

²⁰⁶ Section 214(g)(1)(B).

the statutorily prescribed rent levels and the terms of government financing, the deed must state that the rents shall not exceed those prescribed by the terms of the financing.

Not all owners of low income housing properties will be able to meet the requirement of a recorded deed restriction contemplated by the legislative revision to section 214(g)(2)(A). A deed restriction is a limitation on the use of property, typically imposed by a grantor in the deed used to convey the property to the new owner [grantee]. Thus, under California law, a deed restriction requires two persons, a grantor and a grantee, or two property owners, in order for a restriction on the use of property to be enforceable. Accordingly, an owner of a low income housing project such as a nonprofit charitable and/or religious corporation, would not be able to meet the "recorded deed restriction" requirement by recording a new deed in which it unilaterally imposed the restriction on its property required under section 214(g)(2)(A).

The recorded deed requirement may be met by low income housing properties operated by two entities, a limited partnership and a nonprofit [corporation] managing general partner. These entities may enter into a personal covenant or contract and record it in the county where the low income housing property is located. Thus, if one entity failed to comply with the restriction on the use of the property for low income housing, the other entity would have a cause of action based on contract law principles. (See example of deed restriction in Appendix XX.)

Additional Requirements

Another requirement is that the owner must also certify that property tax savings are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.²⁰⁷ The certification requirements are met by the property owner completing and signing Form AH267L, Welfare Exemption Supplemental Affidavit—Lower Income Households. The certifications are under penalty of perjury on the Supplemental Affidavit, ~~(Form BOE 267L)~~ which must be completed and submitted with the Welfare Exemption Claim (Form BOE 267). (See Chapter 6, *Welfare Exemption Claim Process*, for filing requirements.)

Requirements for Limited Partnership Owners

Two-Entity Structure; Limited Partnership and Managing General Partner

Subdivision (g) allows for a "two-entity" operational structure, where one entity, a limited partnership, owns the property used for low-income housing, and another entity, an eligible nonprofit corporation, is the "managing general partner of that limited partnership." This two-entity structure must be reflected in both the terms of the limited partnership agreement and in the statement of limited partnership filed with the Secretary of State's office.

The provisions of the Revised Limited Partnership Act, Corporations Code Sections 15611-15681, are applicable to limited partnerships formed for the purpose of owning low-income housing. The limited partnership is validly formed only if it meets the requirements of Corporations Code Section 15621. Its formation is completed when its Certificate of Limited

²⁰⁷ Section 214(g)(2)(B) and (g)(3).

Partnership is recorded with the Secretary of State.²⁰⁸ Subdivision (c) of Corporations Code Section 15621 states that *for all purposes*, a copy of the certificate of limited partnership (Form LP-1) duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and constitutes prima facie evidence of its existence.

Even if the limited partnership requirements are met, the exemption under Section 214(g) applies only if and when its managing general partner is an "eligible nonprofit corporation." By way of example, if the certificate of limited partnership is filed with the Secretary of State's Office, in June 1997, and the nonprofit organization was incorporated later, in August 1997, the limited partnership which owns the low-income housing property is not qualified under Section 214(g) in 1997. Only after the managing general partner of the limited partnership becomes an "eligible nonprofit corporation," and the limited partnership agreement establishes that the nonprofit corporation is a managing general partner, could the limited partnership thereafter be qualified for the exemption under Section 214(g).

Thus, if the limited partnership agreement is amended or restated to admit a qualified "managing general partner," and the certificate of limited partnership is amended, the limited partnership may qualify for property tax exemption under section 214(g), if the effective date of the amended or restated agreement is prior to lien date of the fiscal year for which the claim for exemption is filed, or prior to the date of acquisition of the property, as the case may be. If as of the lien date the managing general partner of the limited partnership is not a qualified nonprofit corporation pursuant to section 214, the exemption claim shall be denied.

Managing General Partner

If property is owned by a limited partnership, rather than a religious, hospital, scientific, or charitable fund, foundation, or corporation, the managing general partner of the limited partnership must be an eligible nonprofit organization meeting the requirements of section 214. For purposes of satisfying the requirements of subdivision (g), the limited partnership agreement provided to the assessor should:

- Determine the effective date of the formation of the limited partnership based on the date of filing of the certificate of limited partnership (Form LP-1) or certificate of amendment thereto, with the Secretary of State;
- Identify the managing general partner (in the case of multiple general partners) on the date of filing and indicate its specific corporate form (with articles of incorporation);
- Ascertain from the partnership agreement the specific responsibilities and duties of the managing partner to determine if the managing partner is, in fact, managing the partnership; and

²⁰⁸ The Office of the Secretary of State maintains filings and files for limited partnerships. Corporations Code Section 15621 provides in this regard that in order to form a limited partnership, the general partners shall execute, acknowledge, and file a certificate of limited partnership and, either before or after the filing of a certificate, the partners shall have entered into a partnership agreement. The certificate shall be filed in the Office of the Secretary of State and shall state, among other things, the names and addresses of the general partners.

- Identify the property owned by the limited partnership and each of the partners' respective capital contributions and profit and loss interests in the limited partnership.

As to contributions by general partners, applicable provisions of law do not require that the general partner of a limited partnership either have an interest in the profits and losses of the limited partnership or make a capital contribution to the limited partnership. However, a person²⁰⁹ without some type of equity interest in a limited partnership, may not qualify as a general partner under general California law. In such cases, if that "general partner" is the only general partner of the limited partnership, then the limited partnership may not qualify as a partnership under California law.

In applying the "managing general partner" aspect of section 214(g), the following factors should be considered in determining the eligibility of a nonprofit corporation as a managing general partner of a limited partnership.

- If under the limited partnership agreement the nonprofit corporation is named as a managing general partner and has authority over some aspect of the limited partnership's general operations, the nonprofit corporation may be considered a managing partner for purposes of claiming property tax exemption.
- It should be clearly evident that the agreement provides for the designation of a managing partner and delineates its rights, responsibilities and, if appropriate, compensation. The limited partnership agreement typically contains a broad delegation of authority to the managing general partner; however, attention should be specifically focused on which decisions are reserved for the managing general partner, other general partners and the partnership as a whole.
- The managing general partner's responsibilities and duties, as stated in the limited partnership agreement, must reflect that ~~that~~ it is, in fact, managing the partnership. For example, if the managing general partner's sole duty is to maintain its status as a tax-exempt nonprofit organization under federal law (IRC, section 501(c)(3)), the organization does not meet the managing general partner requirement due to an absence of management responsibilities and duties.
- If there are co-general partners and none specified as the "managing general partner," then all of the general partners listed must file and qualify pursuant to section 214(g) before any of the partnership's property can be eligible for exemption.

Management Duties and Responsibilities of a Managing General Partner

The California Revised Limited Partnership Act, Corporations Code §§15611 et. seq., (CRLPA) governs limited partnerships and prescribes the rights, powers, duties and liabilities of limited partners and general partners.

²⁰⁹ A person is a nonprofit corporation for section 214(g) purposes.

- 1 • A limited partnership is defined as "a partnership formed by two or more persons under the
2 laws of this state and having one or more general partners and one or more limited partners."
3 (Corp. Code § 15611(r).)
- 4 • Authority for a general partner to manage the business of a limited partnership is found in
5 Corporations Code Section 15643(a), which states that a general partner of a limited
6 partnership has the same rights, duties and liabilities of a general partner of a general
7 partnership. Thus, section 15643(a) provides authority to the general partner of a limited
8 partnership to manage the partnership business and to exercise the powers consistent with
9 that authority.
- 10 • The term, "managing general partner" is not defined in the CRPLA nor in the Uniform
11 Partnership Act. However, in the application of these basic Corporations Code provisions to
12 the requirements of section 214(g), the term can reasonably be construed to mean a general
13 partner authorized by the limited partnership agreement to direct, conduct or control the
14 business of the limited partnership. Such a managing general partner of a limited partnership
15 would have all the statutory powers authorized to a general partner of a general partnership,
16 except those expressly limited or eliminated by the provisions of the limited partnership
17 agreement. As set forth in the CEB Practice Handbook, *Advising California Partnerships*,²¹⁰
18 those powers may include, subject to the applicable rights of the Limited Partners, the
19 following:
 - 20 • Acquire, hold, assign or dispose of property or any interest in property
 - 21 • Borrow money on behalf of the partnership, encumber partnership assets, place title
22 in the name of nominee to obtain financing
 - 23 • Prepay in whole or in part, refinance, increase, modify or extend any obligation
 - 24 • Manage the property, rental of units, maintenance and repair
 - 25 • Retain and supervise property management agent
 - 26 • Employ at partnership expense, building management agents, other on-site personnel,
27 insurance brokers, loan brokers, real estate brokers, attorneys and accountants
 - 28 • Pay organizational expenses incurred in the creation of the partnership and all
29 operational expenses
 - 30 • Sign deeds, notes, deeds of trust, contracts and leases; and other such legal documents
31 that bind the Partnership
 - 32 • Maintain all partnership books and records
 - 33 • Open and maintain Partnership bank accounts
 - 34 • Supervise preparation of all tax returns, budgets and reports, and provide to the
35 limited partners

²¹⁰ California Continuing Education of the Bar, Second Edition, §5.104, with 1998 supplement.

- Determine the amount and timing of distributions
- Cause the partnership to enter into other partnerships as a general or limited partner and exercise the duties required of the partnership as a partner in any other partnership

In summary, to be a "managing general partner," the nonprofit corporation should possess the authority to exercise at least some of the management responsibilities listed above on a day to day basis. As discussed in the next section, that authority may be shared to some extent with other general partners in the limited partnership.

Shared Management Authority

Corporations Code section 15645 provides that a limited partnership agreement may create a hierarchy of classes of general partners; with some general partners having more rights, powers, and duties than others. Thus, a limited partnership may have multiple general partners who may decide among themselves which general partners will have which duties and responsibilities, provided that the nonprofit managing general partner has at least some substantial partnership management duties and responsibilities over some aspect of the partnership business.

Some limited partnership agreements authorize a sharing of management duties and responsibilities between the nonprofit managing general partner and another general partner. An example would be language stating that "the general partners acting unanimously within the authority granted to them shall have full, complete and exclusive discretion to manage and control the business of the partnership...and shall make all the decisions affecting the partnership and shall manage and control the partnership." Such provisions requiring each general partner to obtain the consent of the other prior to taking any action or making any decision, provide equal authority to each in managing the business of the partnership. As such, the nonprofit managing general partner would have sufficient management responsibilities and duties to qualify for exemption as a managing general partner within the meaning of section 214(g).

Insufficient Management Responsibility

Some limited partnership agreements for partnerships with two or more general partners, when read as a whole, do not provide sufficient management authority to the nonprofit managing general partner. Typically, such agreements contain provisions authorizing the sharing of broad management authority by the general partners, including the day to day management of the partnership business. However, this language is followed by other provisions which nullify the language which grants the nonprofit partner sufficient authority to be considered a managing general partner. The following examples are of limited partnership agreements that have not provided the nonprofit managing general partner with sufficient management authority to qualify for the exemption:

- Clause Delegating Entire Authority of Nonprofit Managing General Partner to Another General Partner

1 Some agreements, after granting broad management authority to the nonprofit managing
2 general partner, contain a provision in which the nonprofit managing general partner
3 delegates its entire management authority to an "administrative general partner." Such a
4 provision, in effect, nullifies the preceding language granting the nonprofit managing
5 general partner authority to manage the partnership business and causes the partnership not
6 to qualify under section 214(g)(1).

7 • Incentive Management Agreements

8 Some limited partnership agreements grant substantial management authority to a general
9 partner other than the nonprofit managing partner, pursuant to a separate "Incentive
10 Management Agreement." Pursuant to this agreement, the Administrative General
11 Partner, serving in the capacity of a "Supervisory Management Agent," is paid a fee to
12 perform specified management services. The language in the limited partnership
13 agreement generally provides a broad delegation of management authority to the general
14 partners, but lacks provisions that grant specific management duties to the nonprofit
15 managing general partner. Thus, the delegation of broad management authority to the
16 nonprofit managing general partner is rendered meaningless by the Incentive Management
17 Agreement that authorizes the Administrative General partner to perform a substantial
18 number of management duties. The nonprofit managing general partner is left without
19 decision-making authority over any aspect of the limited partnership's operation, causing
20 it not to satisfy the requirement in section 214(g)(1).

21 • Diversion of Management Authority from the Nonprofit Managing General Partner to the
22 Other General Partner

23 Some limited partnership agreements contain a provision that grants broad management
24 authority over the partnership business to the general partners, followed by numerous
25 separate provisions that grant decision-making authority over substantially all the
26 functions of the limited partnership to the general partner other than the nonprofit
27 managing general partner. When this agreement is read as a whole, substantially all the
28 management authority of the limited partnership business has been diverted piecemeal to
29 the other general partner, leaving none for the nonprofit "managing general partner." As
30 such, the nonprofit managing general partner is not qualified within the meaning of section
31 214(g)(1) due to insufficient management duties and responsibilities.

32 • Non-Management Duties of the Managing General Partner

33 Some limited partnership agreements specify separate "managerial" responsibilities to the
34 Managing General Partner that, in fact, are not management duties because they do not
35 involve decision-making authority over some aspect of the partnership business. Such
36 responsibilities include advising the general and limited partners about the requirements of
37 low-income families, publicizing the availability of the low income housing, and obtaining
38 information from tenants. While these activities are beneficial to the operation of the low-
39 income housing project, they do not constitute management of the partnership business. In
40 this factual situation, the limited partnership agreement designates virtually all the

management authority, function by function, to the other general partner. Absent provisions of the limited partnership agreement that provide decision-making authority to the managing general partner over some aspect of the limited partnership's general operations, the property will not qualify for exemption.

PROPERTY ACQUIRED AFTER LIEN DATE

Section 271(a)(3) provides that, under certain circumstances, property taxes can be canceled or refunded in proportion to the number of days for which the property was qualified for exemption, even though the claimant did not own the property on the lien date and acquired the property after the beginning of the fiscal year, provided that certain requirements are met (discussed in Chapter 6).

Limited Partnerships Qualifying After the Lien Date

If the potential claimant is a limited partnership formed after the lien date with a qualified managing general partner and the limited partnership then takes title to the property, the project may qualify for a late-filed exemption pursuant to section 271(a)(3). As previously noted, however, if the project is recorded in the name of the limited partnership prior to having a qualified managing general partner, the property will not qualify for exemption. The fact that a qualified managing general partner was added to the limited partnership after the lien date means only that the limited partnership had a new member, not that a new limited partnership was created for purposes of eligibility under subdivision (g) of section 214. While Corporations Code section 15611 et seq. provides that the admission of a general partner to a limited partnership is effective as of the date that the general partner is admitted in accordance with the partnership agreement, the managing general partner under subdivision (g) of section 214 must also qualify as a non-profit corporation and must be the only "managing" general partner (unless all other managing general partners qualify).

Income Limits

The U. S. Department of Housing and Urban Development (HUD) annually transmits revisions in the income limits to the California Department of Housing and Community Development (HCD). The limits are used to define the terms "very low-income" and "low-income" in accordance with section 3(b)(2) of the United States Housing Act of 1937, as amended, and are listed by dollar amount and family size. They are issued for each metropolitan and non-metropolitan area using the Fair Market Rent (FMR) area definitions applied in the section 8 Housing Assistance Payments program. The revised income limits are based on HUD estimates of median family income. "Lower-income households" are defined in the Health and Safety Code section 50079.5 as persons and families whose incomes do not exceed the limits for lower-income families established and amended in section 8 of the United States Housing Act of 1937. HCD is required to publish these limits in the California Administrative Code. If the federal standards are discontinued, the income limits are 80 percent of the median family income for the geographic areas in which the families are located. The California Tax Credit Allocation Committee, which administers tax credits allowed for qualifying low-income housing projects, defines *rent-restricted* to mean that the gross unit rent is not more than 30 percent of the imputed income limitation applicable to such unit pursuant to section 42(g)(2)(c) of the Internal Revenue

Code. The Committee requires the owner of a project to annually determine and certify the income of each lower-income tenant. A lower-income unit that has been vacated will continue to be treated as a lower-income unit provided that reasonable attempts are made to rent the unit to a qualified lower-income family and the unit is restricted by deed or regulatory agreement.

APPLYING INCOME REQUIREMENTS

The following procedures should be followed in applying the income requirements for lower-income rental housing:

1. Form BOE-267L, Welfare Exemption Supplemental Affidavit—Lower-Income Housing Income Statement, must be completed by the claimant (the nonprofit "managing general partner," not the limited partnership). The affidavit must include the lower-income household income limits based upon number of persons in the household.
2. The assessor should determine whether an officer or manager of the organization verified that the income limits used on each statement provided to each occupant were correct. Independent verification is required. Following the verification of the information by the assessor and the assessor's application of the low-income exemption calculation under subdivision (g) of section 214, the property shall be entitled to an exemption equal to that percentage of the value of the property which the portion of the property serving lower-income households is of the total property. The "percentage of value" referred to in the preceding sentence is calculated by dividing the square footage of the exempt units by the total square footage of the structure.
3. A manager's unit is exempt as incidental to and reasonably necessary for the accomplishment of the exempt purposes, even if the manager's income exceeds the prescribed low-income limits.

Property Held for Construction by Nonprofit Low-Income Home Builders

Section 214.15, effective October 19, 1999,²¹¹ extends the welfare exemption to vacant land owned and operated by a qualifying nonprofit corporation, provided that:

- a qualifying nonprofit corporation meets the requirements of section 214; and
- is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residences for sale at cost to low-income families,
- with financing in the form of a zero interest rate loan; and
- without regard to religion, race, national origin, or the sex of the head of household.

The effect of section 214.15 is that vacant property held for the future construction of residences meeting all the specified conditions described above is to be considered used for an exempt purpose and an exempt activity.

²¹¹ Added by Section 1 of Stats. 1999, Ch. 927, in effect October 10, 1999, operative January 1, 2000.

ELDERLY OR HANDICAPPED HOUSING

Property used exclusively for housing and related facilities for elderly or handicapped families may qualify for property tax exemption, provided that the property is owned and operated by qualifying organizations meeting all the requirements of section 214, under any of three different sets of criteria. (Section 214(f).)

PROPERTY USED EXCLUSIVELY FOR HOUSING AND RELATED FACILITIES FOR ELDERLY AND HANDICAPPED FAMILIES FINANCED BY THE FEDERAL GOVERNMENT

Property financed by the federal government pursuant to section 202 of Public Law 86-372²¹² as amended, section 231 of Public Law 73-479,²¹³ section 236 of public Law 90-448,²¹⁴ or section 811 of Public Law 101-625,²¹⁵ and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of section 214 shall be deemed to be within the exemption.

PROPERTY USED EXCLUSIVELY FOR HOUSING OF ELDERLY OR HANDICAPPED FAMILIES AT WHICH SUPPLEMENTAL CARE OR SERVICES ARE PROVIDED

Property used exclusively for housing and related facilities for elderly or handicapped families, at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are provided, may qualify for the welfare exemption. Although the Board has not adopted any specific requirements that would constitute a minimum element of charitable care ("supplemental care") that must be provided to the elderly or handicapped to qualify a project as exempt, facilities involved in most of the following activities would be considered as providing supplemental care:

- Providing meals and/or direct assistance in the preparation of meals, including or educational activities designed to make tenants aware of the need for balanced meals;
- Providing direct assistance in shopping for food on the basis of need;
- Providing direct assistance in locating and providing clothing and household furnishings;
- Providing daily or frequent companionship through a social program;
- Daily or frequent visitation of tenants who are ill;
- Providing housework on a temporary basis for tenants who are ill;
- Providing referral assistance when professional help is needed;
- Providing emergency transportation for tenants to various facilities throughout the community; and/or
- Providing special attention at the time of death in the family.

²¹² 12 U.S.C. section 1701q, as amended.

²¹³ 12 U.S.C. section 1715v.

²¹⁴ 12 U.S.C. section 1715z.

²¹⁵ 42 U.S.C. section 8013.

1 The foregoing list of activities must represent a sustained good faith effort by claimants over a
2 period of time to assist these residents by providing multiple services, rather than token,
3 occasional service provided in an attempt merely to qualify properties for exemption.

4 **PROPERTY USED EXCLUSIVELY FOR HOUSING AND RELATED FACILITIES FOR LOW-** 5 **AND MODERATE-INCOME ELDERLY OR HANDICAPPED FAMILIES**

6 Also under section 214(f), if the property is not financed by the federal government and the
7 claimant does not provide supplemental care or services, the property may qualify for the welfare
8 exemption only to the extent that the property is used for housing and related facilities low and
9 moderate-income elderly or handicapped families. "Low and moderate income" has the same
10 meaning as the term "persons and families of low or moderate income" as defined by section
11 50093 of the Health and Safety Code. Property which would otherwise be exempt, except that it
12 includes some housing and related facilities for other than low- or moderate-income elderly or
13 handicapped families, shall be entitled to a partial exemption. Limited partnerships may qualify
14 for exemption only as low-income housing under section 214(g); they cannot qualify for
15 exemption under section 214(f).

16 The partial exemption shall be equal to that percentage of the value of the entire property which
17 is equal to the percentage which the number of qualifying low- and moderate-income elderly and
18 handicapped families occupying the property is of the total number of families occupying the
19 property. The "percentage of value" in this case is calculated by dividing the number of qualified
20 units (including the manager's unit) by the total number of units. Form BOE-267_H, *Welfare*
21 *Exemption Supplemental Affidavit—Elderly and Handicapped Housing Income Statement*, and
22 procedures listed thereon should be used in the administration of the income requirements (see
23 Appendix D).

24 **EMERGENCY OR TEMPORARY SHELTERS**

25 A full exemption is available for property used exclusively for an emergency or temporary
26 shelter and related facilities for homeless persons and families, where the property is owned and
27 operated by qualified organizations meeting the requirements of section 214.²¹⁶ In 1988, section
28 214(h) was added, providing that property used exclusively for an emergency or temporary
29 shelter and related facilities for homeless persons and families is eligible for the exemption if the
30 requirements of section 214, including section 214(h), are met. Section 214(h) pertains only to
31 emergency or temporary shelters and related facilities for persons and families which are eligible
32 for funding pursuant to Health and Safety Code Sections 50800 et seq. Rescue missions,
33 halfway houses, shelters for abused women and/or children, etc., may be eligible for exemption
34 under existing provisions of section 214.

²¹⁶ Section 214(h). As used in this subdivision, *emergency or temporary shelter* means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

***APPENDIX XX: EXAMPLE OF DEED RESTRICTION IN
COMPLIANCE WITH SECTION 214(G)(2)(A)***

This agreement is entered into between _____, a California nonprofit corporation and _____, a California Limited Partnership with the intent of restricting the use of the property located at _____(address/assessor's parcel no.) for rental to qualified low income households, as defined by section 50079.5 of the Health and Safety Code.

The parties hereto agree that the portion of this property currently used for rental to qualified low income households will continue to be used solely for this purpose. It is our intent that the units designated for use by lower income households will be continuously available to or occupied by lower income households at [rents that do not exceed those prescribed by Section 50053 of the Health & Safety Code.]* This agreement shall be recorded with the _____County Recorder.

(Non-profit Corporation)

(Limited Partnership)

Dated _____

*In the situation where the terms of the housing project's federal, state, or local financing or financial assistance conflicts with the rent levels prescribed by Section 50053, the following language would be substituted for the language above in brackets: "at rents that do not exceed those prescribed by the terms of the project's financing or financial assistance."